

No 14/13/87-6Lab./183.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s T./Co. Haryana Chandigarh *versus* Shri Dharmbir.

IN THE COURT OF SH. U.B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,  
FARIDABAD

Reference No. 611/93

*Between*

1. M/S TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH

2. GENERAL MANAGER, HARYANA ROADWAYS, FARIDABAD

.. *Management*

*versus*

SH. DHARMBIR, S/O SH. SHIV CHARAN C/O SH. BHIM SINGH YADAV, 65-A, CHAWALA COLONY, 100 FEET ROAD, BALLABGARH

.. *Workman*

*Present :*

Sh. B. S. Yadav, AR, for the workman.

Sh. Jagbir Singh for the management.

#### AWARD

In exercise of the powers conferred by clause (c) of Sub Section (i) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government Endorsement No. 24191—97 dated 7th July, 1993 :—

Whether the termination of services of Sh. Dharmbir is legal & justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he belongs to a financially poor scheduled Caste family. He had got his name registered with the employment exchange after the passing matriculation. In Feb. 1988 a question (question No. 386) was raised in the Haryana Assembly that the persons belonging to general category were being appointed on various jobs in the office of respondent No. 2 against the vacancies reserved for scheduled castes. In that situation the respondent No. 1 had issued instructions to respondent No. 2 to appoint the persons belonging to the scheduled castes immediately in accordance with the instructions issued by the Government. On 26th February, 1988 the respondent No. 2 selected 21 candidates belonging to the scheduled castes for appointment as conductors and on that basis the workman was appointed on 25th March, 1988 as conductor and he worked upto 31st August, 1988. On 9th January, 1988 the respondent No. 2 illegally terminated his services along with 16 other conductors. Aggrieved by the order the workman filed a civil writ petition No. 7532/88 before the Hon'ble High Court of Punjab & Haryana. The Hon'ble High Court,—*vide* its order dated 31st August, 1988 directed that the services of the workman and 16 others conductors be not terminated till further orders. The present workman and others submitted contempt petition but that was dismissed on a technical ground that it was not proved that the order of the Hon'ble High Court dated 31st August, 1988 was served on the respondents on that date. It was however, ordered by the Hon'ble High Court that Advocate General of the Haryana shall ensure that if sufficient number posts was still available the petitioners whose writ petition was also admitted shall be accommodated as conductors on the posts on which they were already working. The Hon'ble High Court finally dismissed the writ petition,—*vide* order dated 4th August, 1989 on the assurance given by the respondents to consider the present workman and others for appointment as and when there was an occasion to make it. In that situation the workman was again appointed on 12th July, 1989 and he worked upto 31st January, 1990. His services were again terminated w. e. f. 1st February, 1990 illegally without making payment of retrenchment compensation envisaged under section 25-F of the Act. Consequently, he is entitled to be reinstated in to service with full back wages and continuity in service.

3. The respondent No. 2 submitted written statement stating therein that the workman was appointed on purely *ad hoc* basis and had not worked for a continuous period of 240 days on both the occasions. That being so, the workman is not entitled to the relief prayed for by him.

4. The workman submitted rejoinder re-asserting the previous averments and denying the averments of the respondent No. 2.

5. On the pleadings of the parties, the following issues was framed :—

1. Whether the termination of services of Sh. Dharambir is legal & justified ? If not, to what relief, is he entitled to ? (As per terms of reference.)

6. Both the sides have led evidence

7. I have heard the authorised representatives of both the sides and have also gone through the carefully. My findings on the aforesaid issue are as under :—

Issue No 1:

8. It has been submitted on behalf on the respondent that it stands proved from the statement of MW-1 Kanwer Sen that the workman had not worked for a continuous period of 240 days prior to the termination of his services and that his services were terminated when no longer required. Consequently, he is not entitled to the relief claimed by him.

9. On the other hand, it has been submitted on behalf to workman that he had work for a period of 160 days continuously against a vacancy reserved for candidates belong to scheduled castes during from 25th March, 1988 to 31st August, 1988 and for 173 days continuously on 12th September, 1989 to 31st January, 1990. He had thus, worked for a period of 333 days. He was not paid retrenchment compensation as envisaged under Section 25-F of the Act. Consequently, he is entitled to be reinstated into service with continuity in service and full back wages.

10. The case of the workman is based on the ground that he was appointed against a vacancy reserved for a person belonging to a scheduled castes but this position does not appear to be correct. This observation is based on the ground that respondent No. 2 informed respondent No. 1—*vide* letter dated 28th December, 1990 Ex.W1 that 48 conductors had been working against 657 posts reserved for scheduled castes in the year 1988. It is further noticed from the letter dated 26th September, 1988 Mark A that the respondent No. 2 had sent requisition for 5 conductors for appointment against the posts or conductors reserved for scheduled castes that as many as 21 persons were selected of the name workman figured at Sr. No. 18. It is also mentioned in this selection list contained in a letter dated 26th February, 1988 mark A that the selected candidates shall be appointed as and when vacancy arise. Similarly it is observed from the letter dated 12th October, 1989 placed on file that the workman was appointed purely on temporary and *ad hoc* basis till further orders or till the arrival of approved candidate the S. S. S. Board whichever was earlier. It is nowhere mentioned in this letter that the workman was being appointed against one of the vacancies reserved for a scheduled castes candidates. The workman also admitted this position in his cross examination that he was appointed temporary on *ad hoc* basis. It is the admitted position that the workman had not worked for a continuous period 240 days on both the occasions. That being so, the workman had no right to raise the demand under the provisions of the Act. Consequently, it is held that the termination of services of the workman by the respondents is legal and justified. Resultantly, he is not entitled to any relief. The award is passed accordingly.

The 9th January, 1995

U. B. KHANDUJA,

Presiding Officer,  
Labour Court-II,  
Faridabad.

Endorstment No. 115, Dated 17th January, 1995.

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to the Government Haryana, Labour Department Chandigarh.

U. B. KHANDUJA,  
Presiding Officer,  
Labour Court-II,  
Faridabad.